

Human Rights *in British Columbia*

April 2003

RECRUITMENT AND SELECTION: Information for Employers

The rights of British Columbians are protected by the Human Rights Code. Prohibiting discrimination in the recruitment and selection of employees benefits everyone, including employers, because only job-related considerations are used to assess applicants and employees. When these criteria are used in assessment, employers have a better chance of hiring the best person for the job.

The BC Human Rights Code covers all provincially regulated businesses and agencies. This includes all the ministries of the provincial government, local and municipal governments, schools and universities, hospitals and medical clinics, and private businesses such as stores, restaurants, and rental accommodation.

(There is also a Canadian Human Rights Commission which deals with federally regulated agencies and businesses.)

Recruitment and selection

Recruitment procedures that are free from discrimination will attract the widest selection of applicants. If recruitment appears to exclude a particular group or class, qualified candidates may be discouraged from applying. The test of effective recruitment procedures is whether all qualified candidates are encouraged to apply.

The following guidelines will help employers identify questions they should not ask and also identify questions that can be asked after the decision to hire is made. Although the Code does not prohibit the asking of questions which disclose information such as race and sex, it is very unwise to do so. Asking about such things could lead to a complaint of discrimination if individuals protected by the legislation are denied employment opportunities. There is also the real possibility that using such poor selection techniques will lead to hiring a person who may not be the best qualified.

Types of Unlawful Discrimination & Harassment

The Human Rights Code makes discrimination and harassment on the basis of the following characteristics unlawful:

- Race
- Colour
- Ancestry
- Place of Origin
- Age (covers only those 19 years and older and less than 65 years old)
- Sex (which includes pregnancy, breastfeeding, and sexual harassment)
- Physical or mental disability (which includes HIV/AIDS and drug or alcohol addiction)
- Sexual orientation (being gay, lesbian, straight or bi-sexual)
- Criminal conviction (employment only)
- Political belief (employment only)
- Lawful source of income (tenancy only)
- Religion
- Marital status
- Family status

Pre-Employment and Post-Hiring Inquiries

If an employer asks questions that are not directly related to bona fide occupational requirements, and relate to the grounds listed in the Human Rights Code, then the employer is open to complaints of discrimination by unsuccessful candidates.

There is a difference between pre-employment and post-hiring inquiries. Questions that could be considered discriminatory if asked before hiring may be asked afterwards if there is a legitimate need for the information. For example, a candidate's marital status should not be asked before hiring, but may be asked afterwards for taxation purposes or employee benefits.

(Pre-Employment and Post-Hiring Inquiries cont'd.)

The General Rule: Ask only what is needed to make a hiring selection on the basis of merit

- Do not ask questions of applicants which are not job related and do not help you decide who is the most qualified applicant.
- You may ask a question which will disclose information about a prohibited ground of discrimination if the answer will help you decide who the best applicant is.
- For example, if the applicant needs university qualifications you may ask for proof the person meets those requirements even though the answer may disclose the person's place of origin.

Age

- You may ask if the applicant has reached BC's legal working age, but do not ask anything which would reveal any more about the person's age.
- After you have decided to offer the position to the applicant, you can ask about the person's age for enrolment in pension and benefits plans.

Race, Colour, Ancestry, Place of Origin

- You may ask if the applicant is legally entitled to work in Canada.
- Do not ask about the person's race, colour, or ancestry.
- Do not ask about the place of origin, birthplace, citizenship, or nationality of the applicant or the applicant's relatives.
- After you have decided to offer the position to the applicant, you may ask for documents which may disclose the person's place of origin or race. For example, you may ask for a birth certificate for enrolment in benefits plans or a photograph for security passes.

Marital and Family Status

- You may ask if the applicant is able to work the shifts and schedules required of the position. You may ask if the applicant is able to travel as required by the nature of the position or if the applicant is willing to relocate.
- If the applicant cannot work the usual shifts or relocate, would it be possible to accommodate the person's needs?
- Do not ask if an applicant is single, married, divorced, engaged, separated, widowed or living common law.
- Do not ask about the applicant's spouse, children and/or dependents until after you have decided to offer the person the position. Then you can ask things which will disclose marital and family status if the information is required

Employment Agencies

Employment agencies must not refuse to refer a person for employment on the basis of the prohibited grounds.

In making referrals to client employers, employment agencies must not discriminate. This includes the requirement that, when deciding to make a referral, the applicant's need for accommodation be taken into account.

Employment advertising

Advertising that contains accurate, job-related specifications will save time and energy for employers and applicants and prevent complaints of discrimination.

The Code specifically prohibits employment advertisements that express a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

Duty to accommodate

When making recruitment decisions, employers must keep in mind the requirement to accommodate people who may require modifications to the usual ways the work is done.

Employers are required to reasonably accommodate the special needs of individuals where these needs stem from the group factors listed in the Code page. Ignoring these needs can result in lost opportunities for employment and is simply not good business. Failure to reasonably accommodate special needs is a form of discrimination unless the accommodation would create an undue hardship for the business.

for tax purposes, benefit and pension plans, or other reasons such as notifying next of kin in case of emergencies.

Mental or Physical Disability

- You may ask applicants if they have any physical or mental disabilities affecting their ability to do the job they are applying for, or which they want you to take into consideration when determining job placement.
- If the applicant discloses a disability, you should ask for details about how the disability affects their ability to do the job and what accommodations might be made so they could do the job safely and efficiently.
- Applicants may be required to undergo a pre-employment medical as long as the requirement is imposed after an initial decision has been made that the person meets the requirements of the job and if it is required of all applicants.
- Do not ask for a general statement of the applicant's disabilities if it is not necessary to determine the person's ability to do the job.
- Do not ask if the person has ever been injured or made a Workers' Compensation claim.

Religious Belief

- Do not ask about an applicant's religious beliefs, religious affiliation, or church membership.
- If an applicant indicates a need for an adjustment to work schedules for religious purposes, you must consider whether it is possible to accommodate the need without undue hardship.

Sex and Sexual Orientation

- Do not ask about an applicant's sex or sexual orientation.
- Do not ask for information regarding pregnancy, childcare arrangements, or child bearing plans.

Political Belief

- Do not ask about an applicant's political beliefs, unless it is a bona fide requirement, such as requiring that a person applying to work for a particular political party be a supporter of that party.

Criminal or Summary Conviction

- If the job requires bonding, you may ask if an applicant is eligible to be bonded.
- If the job involves working with children, you may ask if an applicant can be approved to work with children.
- Do not ask if an applicant has a criminal and/or arrest record unless there is a bona fide requirement to know.

Further Information

Information about the complaints process is available from the Human Rights Tribunal.

Human Rights Tribunal

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